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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058543
Party	Plaintiff Edge Games Inc
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Date	02/09/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.		
Petitioner,		Cancellation No.: 92058543
v.		Mark: EDGE
RAZER (ASIA-PACIFIC) PTE LTD		Reg. No.: 4,394,393
Registrant		Reg. Date: September 3, 2013
_____		

Re: *Edge Games, Inc. v. Razer Asia Pacific Ltd. Pte, a Singapore Co.*

Petitioner has hired experienced trademark litigation counsel to conduct further litigation in this cancellation proceeding. In order to ensure there are no future transgressions, all rules and orders of the TTAB will be adhered going forward.

Present counsel for the Petitioner has communicated with counsel for the Respondent, Keith Barritt, to resolve all outstanding discovery issues as soon as possible. *See Trademark Trial and Appeal Board Manual of Procedure [TBMP], TBMP Rule 408.01.*

Pursuant to this effort, this counsel emailed Mr. Barritt suggesting that he list all outstanding discovery issues so that they can be easily identified and resolved. Mr. Barritt replied. Mr. Barritt replied by identifying Interrogatory 8(e), Interrogatory 12(d), and Interrogatories 12(e)-(f).

This Counsel has reviewed those discovery issues identified by Mr. Barritt and believes that all requested documents and interrogatory responses have been produced, especially after Petitioner submitted a supplemental discovery response on December 29, 2015. Thus, Respondent's discovery has already been completed, except for one document for which a court order yet to be obtained by Razer is necessary. *See Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB

2009), quoting *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120 (D. Nev. 1993) (“In order for the meet and confer process to be meaningful and serve its intended purpose, ‘the parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions.’”)

As an additional measure, Petitioner hereby requests an extension of time to respond to discovery requests and a resetting of the discovery schedule, as necessary, for up to 60 days. **TBMP** Rule 403.04. Good cause exists for granting this requests in that issues of production of documents and responses to requests for admissions, as well as depositions, should be settled in such a way as to hear this matter on the merits. *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1721 (TTAB 1989) (presentation of merits of case aided by relieving opposer of admission on relevant issue and prejudice avoided by allowing applicant limited discovery as to the amended answer).

In addition, based on a review of the correspondence, discovery requests, and discovery already produced by the Petitioner, Petitioner’s Counsel believes that there is only one outstanding issue related to a single license. Otherwise, all discovery interrogatories and requests for production of documents by Registrant have been responded to fully.

Some of these requests concern events that occurred over twenty (20) years ago. After a search of all past records and files in the possession of the Petitioner, the Petitioner states that it has produced all documents in its possession and that it has conducted a reasonable search for additional documents, but has found none. Petitioner reserves its right to file supplemental responses. **TBMP** Rule 408.02; **Fed. R. Civ. P.** 26(e). To date, Petitioner has narrowed the amount of disputed requests as much as possible, to only a single issue that Petitioner believes is in the hands of Registrant to resolve, and about which Petitioner is unable to take further action. *See Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986).

Petitioner understands and acknowledges the two alleged transgressions of the Board's January 30, 2015 order as to the filing of uncontested motions without prior oral consent, and regarding *ex parte* contact with the Board. While deeply regretting actions that appeared to be contrary to the Board's order, Petitioner wishes to note that it was not its intention that its December 8, 2015 filing be processed as an uncontested motion, but rather it was a misguided attempt on Petitioner's part to invite the Board to consider sanctioning Registrant *on the Board's own motion*. Petitioner will not make such an error in future, and kindly requests that the Board give no consideration to that December 8, 2015 filing.

As to the January 2016 *ex parte* contact with the Board, Petitioner deeply regrets not following the Board's January 30, 2015 order sufficiently closely, and assures the Board this will not happen in future. However, Petitioner at the time believed that the contact it made was in line with the *ex parte* oral contact made with the Board in April 2015 under almost identical circumstances, at which time the Board did not criticize Petitioner's *ex parte* contact. Further, in its defense, Petitioner was confused as to the Board's true requirements in regard to oral contact with the Board, in part because the Board initiated *ex parte* contact with Petitioner twice on October 5, 2015 in response to oral *ex parte* contact made by Petitioner, and at that time, too, the Board did not criticize Petitioner making such *ex parte* oral contact, and indeed did make its own such contact with Petitioner at that time. Accordingly, while Petitioner assures the Board that it will closely adhere to all Board rulings going forward, Petitioner does not believe it would be fair or equitable to sanction Petitioner at this time.

Petitioner's counsel understands the procedures and rules at the TTAB so that no future *ex parte* communications are contemplated. **TBMP** Rule 105. All communications will be in writing. **TBMP** Rule 104. All orders of the TTAB will be observed.

Petitioner will withdraw, if necessary, any unnecessary or improper *ex parte* communication. This cancellation proceeding should be heard on the merits since there is a substantial amount of evidence relevant to the material facts on Petitioner's prior uses of the mark in question. Even if discovery responses by Petitioner are found to be late, Petitioner has nonetheless attempted to meet all legitimate discovery requests. That said, Petitioner does not believe any of its responses have been late since they have all been promptly made in response to clarifications received from Respondent as to what further responses it was seeking.

To the extent that Respondent wants further responses or clarification, Petitioner will make a good faith effort resolve any dispute directly with the Petitioner and his counsel. *See MacMillan Bloedel Ltd. v. Arrow-M Corp.* (TTAB 1979) 203 USPQ 952, 953 (party seeking discovery is required to make good faith effort to determine why no response has been made before coming to Board with motion to compel, and Respondent did not make any such good faith attempts in this instance before coming to the Board with its motion).

To the extent that Respondent has suffered prejudice, that harm appears to be only a delay in resolution, and we apologize for the delay. Assuming that a resolution of any remaining discovery issues is identified by Respondent, then these may be

resolved promptly, following which this matter should then proceed to be heard on the merits. Final judgment should not be issued nor should this cancellation action be dismissed since the merits of this case will demonstrate that the Petitioner has substantial prior rights to the mark in question. Further, as the Board is aware, it is the policy of the law to decide cases on their merits, and that the resolution of an action on the merits wherever possible is a basic tenet underlying the Federal Rules of Civil Procedure. *See Johnston Pump/General Valve, Inc. v. Chromalloy Am. Corp.*, 13 USPQ2d 1719, 1720 (TTAB 1989); *see also Thrifty Corp. v. Bomax Enters.*, 228 USPQ 62, 63 (TTAB 1985).

Respondent's current motion to compel should be dismissed as moot (as should Respondent's instant motion for judgment, being based as it is on now resolved discovery issues) since as far as this counsel can ascertain from communicating with counsel for Respondent, Mr. Barritt, and after reviewing all discovery responses, all discovery disputes have been resolved with the filing of Petitioner's December 29, 2015 revised responses.

No further motion by Respondent to compel discovery responses should be necessary since all requested interrogatories have been fully responded to, and all available documents have already been produced, except for one document or license, and that item will be produced if the court orders it to be produced pursuant to an anticipated court order. Which Federal court order Petitioner is waiting on Respondent to apply for and obtain as is usual procedure. While awaiting for Respondent to apply for said court order, Petitioner notes that all pertinent details of that license document and its content were covered in the statement by Velocity Micro's President, Mr. Copeland, which statement was already produced to Respondent prior to it filing its instant motion to compel. Indeed, Mr. Copeland's statement was provided expressly in order to avoid Respondent needing to apply for a court order.

Date: February 9, 2016

By: *Gregory Richardson, Esq*

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Gregory Richardson, Esq.  
Attorney for Petitioner  
EDGE GAMES, INC.

### **PROOF OF SERVICE**

I hereby certify that a true and complete copy of the foregoing SUBSTITUTION OF COUNSEL and RESPONSE TO TTAB COMMUNICATION (Dkt. 43) dated January 11, 2016 has been served on Keith Barritt, counsel for the Respondent, by mailing said copy on February 9, 2016 via U.S. certified mail to: Fish & Richardson P.C., P.O. Box 1022, Minneapolis, MN 55440-1022.

Signature Gregory Richardson, Esq

Date: February 9, 2016